

Exhibit X

State of California ex rel. Ven-A-Care of the Florida Keys, Inc.
v. Abbott Laboratories, Inc., et al., Master Civil Action No. 01-12257-PBS,
Subcategory Case No. 06-11337

Exhibit to the December 21, 2009 Declaration of Christopher C. Palermo in Support
of Defendants Mylan Inc. and Mylan Pharmaceuticals Inc.'s. Opposition to Plaintiffs' Motion for Partial Summary
Judgment

Morgan, Patricia Kay

August 27, 2007

Tampa, FL

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IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

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STATE OF ALABAMA, :
Plaintiff, :
vs. : Case No.: CV-05-219
ABBOTT LABORATORIES, INC., : Judge Charles Price
et al. :
Defendants. :

- - - - -x
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL :
INDUSTRY AVERAGE WHOLESALE : MDL No. 1456
PRICE LITIGATION : Civil Action No.
: 01-12257-PBS
THIS DOCUMENT RELATES TO: :
:
ALL ACTIONS :
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DEPOSITION OF PATRICIA KAY MORGAN
August 27, 2007

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12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 MR. BARNHILL: I'm not taking a position on 2 this. My position is the deposition isn't long 3 enough for us to ask the questions that we want, 4 and we're not bound by the protective order. 5 MS. TORGERSON: There is an answer pending 6 still. 7 MR. EDWARDS: Can you read the question back. 8 (The question was read by the reporter.) 9 A. That's correct. 10 Q. And is it also correct that First 11 DataBank did not let the manufacturer control the 12 AWP field? 13 A. That's correct. 14 Q. And the manufacturers did not control the 15 markups that First DataBank used to determine AWP's? 16 MR. KERN: Objection; vague and ambiguous, 17 lacks foundation. Go ahead. 18 A. The markups were based on our wholesaler 19 survey. They didn't have direct influence over 20 those markups. 21 Q. And I just want to direct your attention 22 to your prior testimony at Page 309, Line 4, where 23 you were asked a question -- this is the prior</p>	<p style="text-align: right;">44</p> <p>1 back, please. 2 (The answer was read by the reporter.) 3 BY MR. EDWARDS: 4 Q. Is it correct that this concept of the 5 wholesalers having markups was something that was 6 established well before you joined the industry? 7 A. Before I joined First DataBank or before 8 I joined -- 9 Q. Before you joined the industry. 10 MR. KERN: Object as vague and ambiguous. 11 Q. Just so there's no secret about this, I'm 12 referring in particular to your testimony at Page 13 33 of the deposition we've been looking at. You'll 14 see that you were asked a series of questions about 15 Merck, and then at Line 20 you say, "This was all 16 done well before me and well before I joined the 17 industry." Correct? 18 MR. BARNHILL: Objection to the question and 19 answer; speculative; no foundation. 20 MR. LAVINE: Objection. 21 A. I only hesitate because of the definition 22 of when I joined the industry; but the markups were 23 done well before I joined First DataBank or became</p>
<p style="text-align: right;">43</p> <p>1 testimony of November 13, 2002, that's been marked 2 as Exhibit Morgan 002. 3 You were asked the question "And manufacturers 4 do not control the markup," and your answer was 5 "Correct." Can you verify that that answer is true 6 and accurate? 7 A. That is true and accurate. 8 Q. Now, is it correct that during your time 9 at First DataBank the markups were generally 20 10 percent or 25 percent? 11 MR. KERN: Objection; outside the scope. Go 12 ahead, Kay. 13 A. I don't even have a foundation with which 14 to answer that question, because there were several 15 different numbers on the markup table. 16 Q. Okay. Do you recall what those numbers 17 were? 18 A. The markup could be 1 times S, which was 19 used as AWP suggested by the manufacturer. I don't 20 recall the higher end, but there were 33 percent 21 markups on there. There were 16 and two-thirds, 22 etcetera. There were different numbers. 23 MR. BARNHILL: Could you read that answer</p>	<p style="text-align: right;">45</p> <p>1 aware of markups being applied. 2 Q. Fair enough. Now, in some cases during 3 your tenure at First DataBank some manufacturers 4 would suggest AWP's; is that correct? 5 A. That's correct. 6 Q. And they were populated into a field 7 called suggested wholesale price or SWP; is that 8 correct? 9 A. That's correct. 10 MR. KERN: Pause a second before you answer. 11 I'll object as to outside the scope. Go ahead. 12 Q. And the SWP was not defined as an actual 13 market price either; correct? 14 MR. KERN: Objection; outside the scope. 15 A. That's correct. 16 Q. And if the wholesaler in your surveys 17 said, "Use the SWP as the AWP," then First DataBank 18 would do this -- 19 MR. KERN: Same objection. 20 Q. -- correct? 21 MR. KERN: Sorry, Steve. Same objection. Go 22 ahead. 23 A. That's correct.</p>

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<p style="text-align: right;">158</p> <p>1 Q. You can answer.</p> <p>2 A. Our Blue Book -- I'm sorry. The baseline</p> <p>3 price is a calculated price by First DataBank; so</p> <p>4 it would not be one that was reported to us. And</p> <p>5 if we calculated the AWP, it would not have been</p> <p>6 reported to us as well.</p> <p>7 Q. Okay. I see. So your testimony is that</p> <p>8 First DataBank gets material, data and then makes a</p> <p>9 calculation; is that correct?</p> <p>10 A. My testimony is that each pricing field</p> <p>11 has an editorial policy which governs its</p> <p>12 population, and we follow that policy to populate</p> <p>13 it.</p> <p>14 MR. KERN: Can I interject for a second? Your</p> <p>15 questions as to First DataBank's policies and from</p> <p>16 where the data comes and whether they pass through</p> <p>17 or do something on their own, they relate strictly</p> <p>18 to First DataBank's pricing data; correct?</p> <p>19 MR. BARNHILL: Yes.</p> <p>20 MR. KERN: Okay. Thank you. As you know,</p> <p>21 they also publish clinical information and a whole</p> <p>22 separate set of policies --</p> <p>23 MR. BARNHILL: Right.</p>	<p style="text-align: right;">160</p> <p>1 your publications, and you get one figure directly</p> <p>2 from the manufacturers and that's what's called the</p> <p>3 wholesale net or was called the wholesale net; is</p> <p>4 that correct?</p> <p>5 MR. KERN: Vague and ambiguous.</p> <p>6 A. We do not always get a wholesale net</p> <p>7 price from a manufacturer.</p> <p>8 Q. But if you do get a wholesale net from a</p> <p>9 manufacturer, you publish that wholesale net; is</p> <p>10 that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And wholesale and net was the price at</p> <p>13 which -- the net price at which wholesalers paid</p> <p>14 manufacturers; is that correct?</p> <p>15 MS. TORGERSON: Objection, form.</p> <p>16 MR. EDWARDS: Objection.</p> <p>17 A. It is the published price from the</p> <p>18 manufacturer to the wholesaler.</p> <p>19 Q. Okay. Now, did you ever define -- did</p> <p>20 First DataBank between -- when did you first start</p> <p>21 there?</p> <p>22 A. 1999.</p> <p>23 Q. -- between 1999 and 2005 ever define</p>
<p style="text-align: right;">159</p> <p>1 BY MR. BARNHILL:</p> <p>2 Q. And I'm only asking for the period that</p> <p>3 you have been there and were there. Understand</p> <p>4 that, please.</p> <p>5 A. Correct.</p> <p>6 Q. Now, in terms of making its calculations</p> <p>7 and publishing the data, First DataBank has two</p> <p>8 principal sources of information, manufacturers and</p> <p>9 wholesalers; is that correct?</p> <p>10 MR. KERN: Objection. It misstates prior</p> <p>11 testimony. Go ahead.</p> <p>12 A. I'm sorry. The Medicaid AWP came from</p> <p>13 the Department of Justice. In one of these</p> <p>14 presentations it lists the source for all that</p> <p>15 information. So the Medicaid AWP came from the</p> <p>16 DOJ. The CMS or HCFA FUL comes from CMS or HCFA</p> <p>17 for the population of that field. The baseline</p> <p>18 price is a calculation based on prices that we</p> <p>19 either received, reported or calculated based on</p> <p>20 our editorial policy.</p> <p>21 Q. And that editorial policy -- well, strike</p> <p>22 that. Let me ask you this. First of all, you get</p> <p>23 one figure in connection with your calculations and</p>	<p style="text-align: right;">161</p> <p>1 wholesale net?</p> <p>2 MS. TORGERSON: Objection, form.</p> <p>3 Q. For its customers.</p> <p>4 MR. KERN: Asked and answered.</p> <p>5 A. Wholesale net was defined as the</p> <p>6 published price from the manufacturer to the</p> <p>7 wholesaler.</p> <p>8 Q. All right. And you received that from</p> <p>9 the manufacturer; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And if you could not get it from</p> <p>12 the manufacturer, you would try to get other</p> <p>13 sources who had gotten it from the manufacturer; is</p> <p>14 that correct?</p> <p>15 MR. KERN: Asked and answered.</p> <p>16 A. Correct.</p> <p>17 Q. All right. And then another source of</p> <p>18 information -- well, strike that. That's not the</p> <p>19 only information that you get from manufacturers,</p> <p>20 though; is that correct?</p> <p>21 MS. TORGERSON: Objection, form.</p> <p>22 A. That's correct.</p> <p>23 Q. Among other things you get -- you often</p>